UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

- x

In the Matter of:

MOTORS LIQUIDATION COMPANY,

Debtor.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

December 13, 2012

9:49 AM

B E F O R E :

HON ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Hearing re: Doc #12201 Motion for Objection to Claim(s): Motors Liquidation Company GUC Trusts Supplemental Objection to Proof of Claim No. 65807 Filed By Rolls-Royce Corporation

Hearing re: Doc #8840 Debtors' 159th Omnibus Objection to Claims (Contingent Co-Liability Claims)

Hearing re: Doc #8843 Debtors' 161st Omnibus Objection to Claims (Claims Assumed by General Motors LLC)

Hearing re: Doc #10089 220th Omnibus Objection to Claims (Contingent Co-Liability Claims)

Hearing re: Doc #12053 Motion for Objection to Claim(s) Number: 50945 filed by Tia Gomez

Hearing re: Doc #12175 288th Omnibus Objection to Claim(s) - 2 (Contingent Co-Liability Claims)

Hearing re: Doc #12180 289th Omnibus Objection to Claims (No Liability Claims)

Transcribed by: Jamie Gallagher

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Have seats, please.

Okay, we're here on GM Motors Liquidation. I want to deal with the preliminary and easy matters first, although I'm not persuaded that Rolls-Royce is all that difficult either. Let me start with the preliminary matters. Do we have those?

MR. WU: Good morning, Your Honor. Edward Wu, Weil, Gotshal & Manges for the GUC Trust.

THE COURT: Good morning, Mr. Wu.

MR. WU: Good morning.

Your Honor, if it's okay with the Court, we would like to begin with just several of the uncontested matters which Dickstein Shapiro will be presenting. So, if it's okay with the Court, I'll present it -- I'll hand it over to Colleen Kilfoyle.

THE COURT: All right. Ms. Greer, do you want to come on up? I'm sorry.

MS. GREER: I've given it over to my colleague today.

THE COURT: Okay. Forgive me. I know Ms. Greer pretty well. I think I've seen you before and I've forgotten your name, I apologize.

MS. KILFOYLE: It's Colleen Kilfoyle with

Dickstein Shapiro on behalf of the GUC Trust, Your Honor.

THE COURT: Okay.

MS. KILFOYLE: Today we had one uncontested omnibus objection. It's the 289th omnibus objection to claims. Because the liability associated with the claims, if any, is that of new GM, all three claims on this omnibus objection are going forward. And unless Your Honor has any questions, we can submit an order to chambers on this later today.

THE COURT: No, that's fine. Is there some reason when they heard that there were liabilities of new GM, they didn't say groovy, and just say we're not going to proceed?

MS. KILFOYLE: No, I don't know. I'm not aware of why they didn't, but --

THE COURT: Okay. Well, your motion to disallow is granted, and just deal with the paperwork at your convenience.

MS. KILFOYLE: Yes, Your Honor.

THE COURT: Thank you.

MS. KILFOYLE: Additionally, we have an uncontested objection to a claim filed by Tia Gomez. It's claim number 50945.

As set forth in our papers, Ms. Gomez alleges that she was involved in a car accident while driving her Cadillac Escalade in October of 2006. It's the GUC's -- GUC

Trust's position that the claim is barred by the applicable statute of limitations, which expired prior to the commencement of the bankruptcy.

I don't believe Ms. Gomez is on the phone today. So, given that, would the Court like me to explain the basis for the objection further? Or would you prefer to -- we rest on our papers?

THE COURT: Not really. My phone log doesn't reflect any of the claimants, as far as I'm aware. Didn't I deal with exactly this issue earlier in this case?

MS. KILFOYLE: You did. The Juanita Pickett (ph) claim, which you entered an order, I believe, on June 5, 2012, on the same basis.

THE COURT: Right. And I'm going to sustain your objection on the same basis.

For the avoidance of doubt, just in case this matter, like the Pickett matter, goes up on appeal. For a claim to be allowable in the Bankruptcy Court, it has to be allowable under non-bankruptcy law. Where, as in Pickett and here, a claim was barred by the statute of limitations before the case commenced, it's no more allowable in Bankruptcy Court than it would be allowed in State Court or in District Court.

For those reasons, your objection's sustained.

MS. KILFOYLE: Thank you, Your Honor. And if it

works for the Court, we'll submit an order on this one to chambers later today as well.

THE COURT: Right. Certainly.

MS. KILFOYLE: Thank you.

THE COURT: Thank you. Okay.

Mr. Wu, do you have anything further?

MR. WU: As far as the uncontested matters go, Your Honor, we also have the 289th omnibus -- excuse me, the 288th omnibus objection to claims, also on the basis of 502(e)(1)(b). And with respect to that particular omnibus objection, no responses were received.

So, unless Your Honor has any questions, we would ask that the claims on that omnibus objection be expunged.

THE COURT: No, for the non-objectors, your objections are sustained.

MR. WU: Thank you, Your Honor.

THE COURT: Okay. Are we now up to Rolls-Royce?

MR. WU: Yes.

THE COURT: Will you be arguing on behalf of the estate on that?

MR. WU: Yes, I will, Your Honor.

THE COURT: All right. Mr. Strickon, good morning.

MR. STRICKON: Good morning.

THE COURT: All right, gentlemen, make your

arguments as you see fit. I've read the papers.

Mr. Strickon, I need help from you on this in two respects. First, I would like you to confirm my understanding that your only basis for your contention that 502(e)(1)(b) doesn't apply is the co-liability prong, and that you do acknowledge that the Allison engine claim, the Rolls-Royce claim, is contingent. I'd like you to confirm my understanding that except to the extent that you've shelled out the -- roughly $217,000, no amounts have been spent by your client with respect to the claim, and also that you're acknowledging that it's for reimbursement or contribution.

My second question to you is are you asking me to disregard the two decisions that I, myself, had written in Lyondell Chemical and Chemtura, where I expressly rejected the rationale of that district judge in Allegheny, and all of the other cases that have likewise rejected the Allegheny rationale. I was surprised, to be honest, by the failure of your firm to address in its brief Cottonwood Canyon, which is the granddaddy of the cases that have rejected Allegheny and upon which the other cases rejecting Allegheny all have relied.

Mr. Wu, when it's your turn, I want you to confirm to me that the estate or the GUC Trust is not objecting to the component of the Rolls-Royce claim in the ballpark of

$217,000 with respect to amounts that were previously expended. I think it's clear from the earlier case law that such amounts are allowable. And I want both sides to help me understand why amounts from the time of the filing of the proof of claim, to the date the objection's being heard, which is today, were taken away from Rolls-Royce's ability to recover seemingly, by stipulation, when in the past, I've allowed amounts actually expended right up to the date of the argument.

Under the circumstances, I think I should hear from you first, Mr. Strickon.

MR. STRICKON: Thank you, Your Honor. I'll address your second point first.

What happened here is that an objection was filed to the original claim, and the objection was never received, or if it was delivered, it was misdirected. And we had discovered months after the fact that an order had been entered expunging the claim. We had contacted Weil Gotshal, now approximately a year ago requesting that they vacate the default and reinstate the claim, which they refuse to do.

We spent about seven or eight months trying to negotiate a settlement of the amount of the claim, which would be encompassed in a stipulation vacating the default. We never were able to reach an agreement.

So, the compromise was that they would stipulate

to vacating the default only if we agreed to two conditions. One, that the claims would be allowed as of the date of the original hearing on the objection. And number two, that they claim would be capped at $9 million. And since we had assessed at that time that it was unlikely that the claim would exceed $9 million even if allowed, we had decided that the differential between the day of the original hearing and what was expended up until the date of the renewed hearing, was outweighed by the cost that we would have had to expend in order to move the Court to vacate the default.

THE COURT: Uh-huh.

MR. STRICKON: Okay. With respect to the allowance of the claim, we submit that this is distinguishable from all of those cases.

These -- this property was purchased in 1993. And as part of the purchase agreement, General Motors at that time, which was apparently already in the process of remediating the environmental contamination, had contractually agreed that it would remediate the condition until it was -- until the EPA and other governmental agencies would sign off that the problem had been remediated.

For approximately 16 years, General Motors was on the site, which had been purchased by Rolls-Royce to conducting the remediation process through contractors that

it had hired to do the work. When the case was filed, General Motors promptly walked off the site and said to Rolls-Royce, it's -- it's your problem now.

So, the position we're taking is that this is not a claim for indemnity or contribution that would be disallowed under 502(e), but it's a breach of a contractual obligation to remediate the process. This would have been no different if we were dealing with an unrelated party that had contractually agreed to remediate the environmental hazard. It was just a question of, you know, who had contractually agreed to remediate the problem.

Through that 16 year period, approximately, GM was supervising, incurring the costs, and paying the costs of the remediation as they were obligated to do under the contract in which they sold the property.

And it was -- this is not a question of a -- indemnity or contribution, which is what exists in the other cases. And it's not a question of co-liability. Neither the EPA, nor the Indiana Department of Environmental Management, have filed claims in the case with respect to remediating this property. It's solely the problem of Rolls-Royce.

So, we believe that the other cases are inapplicable. Those cases involved adjacent property owners whose properties were allegedly contaminated by the property

of the debtors, and were seeking contribution from the debtor, or indemnification from the debtor for the cost of the remediation. But this was very different.

The problem was there. Rolls-Royce did now own the property at the time. It purchased the property under a contract, by which General Motors contractually agreed to clean up the mess. And that's why we claim that this is not a claim to be disallowed under 502(e).

As far as the contingent nature of the claim, we have now almost 20 years of history as to what the cost of the remediation would be. At the present time, there's no active remediation going on. It's merely ground water monitoring.

And based upon the reports that we have obtained in the last two years that Rolls-Royce has been supervising the remediation, as well as reports that were provided by General Motors previously, and reports that we have requested as part of the document request, we can establish that this process will take approximately another 30 years to complete.

And on the condition that all the EPA will requires is ground water monitoring to make sure that the natural attenuation will clear up the proxis, it's going to take 30 years. And the cost is not going to go down. The cost is going to stay the same or go up.

So, we've taken the most conservative approach here, on the assumption that the EPA is not going to require any more active remediation of the problem. It was -- the amount of the claims was challenged because we haven't discounted it to present value. We agree that the claim has to be discounted to present value.

But we also submit that there's an inflation factor here, that the costs are going to go up with natural costs of inflation over the next 30 years, and we decided that the cost of the -- increased costs over the years, is probably equal to what would be an appropriate discount factor. So, we've used raw numbers. We've extrapolated them out to 30 years, and came up with a claim of approximately, I think $6.5 million based upon the present costs.

THE COURT: Uh-huh. All right. I'll give you a chance to reply. Mr. Wu.

MR. WU: Your Honor, first with respect to the past environmental remediation costs, you're certainly correct that the amount that we provided in our reply, that we're willing to allow for the claim incorporates the 217,000 which Rolls-Royce has expended. We're certainly not challenging that.

As to your second question regarding why the disallowances as of the date of the original objection

hearing date, rather than today, Mr. Strickon is essentially correct that there was a dispute between the parties as to whether notice was properly received by all the parties.

The parties essentially agreed that rather than go forward with a motion to vacate the prior order, that the parties would agree to a stipulation with certain conditions. One was that the claim would be capped at $9 million, that the claim would be limited to the environmental remediation in the products liability portion of the claim, and certain other conditions. And one of the other conditions was that the disallowance would be as of the original objection date.

THE COURT: Okay. Now talk about what Mr. Strickon said where he contends somewhat differently from his papers, I certainly think, that the other cases are distinguishable more so than Allegheny is right or wrong.

MR. WU: Well, Your Honor, I'm not quite sure that I see that through Mr. Strickon's comments. I will say that at the heart of the case, we do have property that's contaminated. Both parties are liable for the remediation costs. And as Rolls-Royce acknowledges in its response, it's statutorily liable for the cleanup as the successor owner of the property. Rolls-Royce also indicates in its response that it's negotiating with the EPA as to corrective measures for the remediation.

By filing a claim against the debtors, essentially Rolls-Royce seeks payment to minimize its own liability exposure. And the more the debtor is paid, the less Rolls-Royce has to pay, which is, as this Court has said in these cases, and also in Lyondell and Chemtura, the essence of co-liability.

And I think contrary to -- it's a little bit difficult for me to address how I see Allegheny as contrary to the positions that Rolls-Royce has presented --

THE COURT: No, he's relying on Allegheny. And if I said it otherwise, I'm misstating it. What he's saying is that all the other cases that have criticized Allegheny are distinguishable here, and that Allegheny's on point.

MR. WU: Right. Your Honor, I certainly wouldn't agree with that position.

I think the jurisdiction -- this particular jurisdiction has already adopted the line of cases from Cottonwood Canyon, which expressly rejects the Allegheny holding that -- where a claimant, before there's remediation for itself, that that would be a direct claim.

Certainly this jurisdiction and other courts around the country have adopted the position that, in essence, where remediation is being performed and the claimant seeks to just limit its liability by having the debtors pay more, than that is a situation in which we're

talking about co-liability and reimbursement, and indemnification for the costs.

THE COURT: Okay. Anything else before I give Mr. Strickon a chance to reply?

MR. WU: No, Your Honor.

THE COURT: Okay. Mr. Strickon, reply.

MR. STRICKON: Just very quickly, Your Honor.

In both Lyondell and Chemtura, there were allowed -- the EPA had allowed claims in the case. And the whole notion of 502(e) is to eliminate paying twice on the same liability. We don't have that here.

As I said, we're reiterating the fact that our claim is in fact a breach of contract claim for failure to live up to its obligations to remediate the problem. It wasn't just the mere indemnification. In some of the cases, even in the Allegheny case, my recollection is that the property was purchased subject to an indemnification obligation that was given by the seller to the buyer, and the buyer was seeking indemnification.

But we're here seeking, you know, a claim for breach of an actual contractual obligation to remediate the problem.

THE COURT: Mr. Strickon, didn't contractual indemnification provide the basis for co-liability in each of Cottonwood Canyon and in Chemtura, with respect to the

LPRSA members?

MR. STRICKON: Yes, it was. But there was an indemnification against the out of pocket losses that resulted from the contamination.

Whereas in our case, we have a separate contractual obligation to actually remediate the problem. Rolls -- General Motors agreed that it would actively remediate the problem. It paid the costs. It supervised the remediation. And it did so for a period of some 16 years before it filed its bankruptcy petition. That's very different than any of the other cases which, at best, had indemnification provisions.

And even in the Allegheny case, it was only an indemnity that was given. There was no contractual obligation on the seller to actually remediate the problem.

Here, General Motors apparently was remediating the problem, or actively remediating the problem before they even sold the property to our client. So, it's clearly -- it's clearly distinguishable from Chemtura and Lyondell, and even distinguishable from the holding in Allegheny, to the extent that Allegheny didn't even have a contractual obligation to remediate the problem. It merely had an indemnification.

THE COURT: Uh-huh. Anything else?

MR. STRICKON: No, Your Honor.

THE COURT: All right. We're going to take a brief recess. Be back here by 10:25. I can't guarantee you that I'll be ready by then, but please do that.

MR. STRICKON: Thank you, Your Honor.

(Recess at 10:10 a.m.)

THE CLERK: All rise.

THE COURT: Have seats, please.

Gentlemen, in this contested matter in the Chapter 11 case of reorganized debtor, Motors Liquidation Company, formerly known as General Motors, and typically now referred to as old GM, the GUC Trust, the entity formed for the benefit of old GM's unsecured creditors, moves under Section 502(e) of the Code to disallow elements of the claim filed by Rolls-Royce Corporation, the purchaser of old GM's Allison engines division.

After discussions between old GM and Rolls-Royce that have narrowed the controversy, the remainder that's at issue involves claims for environmental remediation and monitoring, principally the latter, that is estimated to be required over the next 30 years as contrasted to amounts already expended to which the GUC Trust understandably raises no objection.

As I conclude that this matter does not differ in any legally cognizable respect from the subjects of my earlier ruling in Lyondell Chemical, Chemtura, and this

case, Motors Liquidation, and the earlier decisions in other case law on which I relied, most significantly Cottonwood Canyon, discussed below, the claim will be disallowed under Section 502(e).

My findings of fact and conclusions of law in connection of this determination follow. There is no material dispute as to the underlying facts.

Many years before the filing of old GM's Chapter 11 case, back in 1993, old GM sold its Allison gas turbine division to an entity that later became part of Rolls-Royce. Under the sale agreement, old GM agreed to address environmental issues with respect to the property it sold, including as relevant here, real estate in Indianapolis.

Among the obligations old GM undertook was a duty to undertake and complete any cleanup, remediation, and/or other actions that were required to be conducted under applicable environmental law. It appears that old GM did so for a period of about 16 years.

In addition, old GM undertook to indemnify its purchaser for damages incurred by the purchaser, which is now Rolls-Royce, "as a result of any investigation, proceeding, claim, suit, or action threatened or brought by a governmental agency or other third party," based on or related to an environmental condition that existed prior to the closing of the sale agreement.

Old GM later rejected this sale agreement, giving rise to claims exposure in favor of Rolls-Royce to the extent otherwise allowable under the claim. Upon its rejection of that agreement, old GM stopped performing the remediation and monitoring activities that had taken place for the earlier 16 years.

Without dispute, Rolls-Royce expended about $217,000 for remediation or monitoring costs, and old GM has acknowledged the allowability of the Rolls-Royce claim to that extent. But I emphasize that the amount here, $217,000, which is concededly due, or at least due as an allowed claim, is for amounts Rolls-Royce actually shelled out.

In addition, and this is the essence of the controversy, Rolls-Royce also seeks allowance of a claim for an additional amount of approximately 6.1 million, which Rolls-Royce estimates that it will have to pay at various times over the next 30 years.

I emphasize that none of this estimated $6 million has been paid, nor has Rolls-Royce introduced any evidence assuming that it would be relevant, even that Rolls-Royce has contractually obligated itself to pay it. In that connection, Rolls-Royce acknowledges that it hasn’t discounted future losses to present worth but asserts that inflation will match the discount rate that would otherwise

apply, fully offsetting Rolls-Royce's failure to discount.

While I have some skepticism as to this coincidence, I don't need to address it now by reason of the legal conclusions that follow.

Turning now to my conclusions of law. I've personally dealt with these same issues at least three times, disallowing similar claims under Section 502(e) in reliance on the overwhelming bulk of authority in the cases that preceded me. I'm not persuaded that this case is in any legally respect different from those other cases, or the cases on which I relied.

Section 502(e) of the Code provides in relevant part, and I'm quoting, "(e)(1), not withstanding subsections a, b, and c of this subsection in paragraph 2 of this subsection, the Court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that," and I'm leaving stuff out, "(b), such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement of contribution."

Thus, under Section 502(e)(1)(b) of the Code, three elements must be met for a claim to be disallowed under Section 502(e)(1)(b). One, the party asserting the claim must be liable with the debtor on the claim of a third

party; two, the claim must be contingent at the time of its allowance or disallowance; and three, the claim must be for reimbursement or contribution.

I've issued three decisions on Section 502(e)(1)(b) in the last two years or so. Two formally published ones in Chemtura, 436 BR 286 in 2010 and Lyondell Chemical, 442 BR 236 in 2011. Also, one dictated one in this very case, Motors Liquidation, involving similar claims by an entity called RELCO.

In these decisions, I addressed each prong of Section 502(e)(1)(b) in turn, but here I need to address only the first requirement, since Rolls-Royce seems to concede, and in any event, I conclude, that its claim for amounts that it hasn't spent and may never spend is contingent and that its claim is for reimbursement or contribution. The latter is the exact purpose and effect of the contractual provisions on which Rolls-Royce relies.

So, Rolls-Royce's only contention, as stated at pages four to five of its objection, is that "it was never and is not in fact co-liable with General Motors for remediation of this site." I must disagree.

I start, as usual, with textual analysis. The key statutory language is "an entity that is liable with the debtor on… such claim." The statute does not specify the legal theory on which both must be liable, nor does it

provide that the legal theory must be the same. From a textual analysis perspective, at least, it can be for any reason. And that conclusion is both consistent with and required by the case law.

As held by the Sixth Circuit and Eagle-Picher, 131 F.3d at 1190, and in Drexel Burnham in this district, 148 BR 982 at page 987, and each case citing in the earlier case of Baldwin-United out of the Southern District of Ohio, 44 BR at 890, the phrase, "an entity that is liable with the debtor 'is broad enough to encompass any type of liability shared with the debtor, whatever its basis.'" The co-liability requirement does not require that the debtor and the claimant be subject to a common civil proceeding or agency action. In fact, it can be on two entirely different grounds as Eagle-Picher held. See 131 F.3d at 1190, where the Court said that so long as debtor and claimant "are both potentially responsible for environmental cleanup costs of the Blanchard Street property, the legal theory underpinning that shared responsibility is irrelevant."

Thus the fact that Rolls-Royce's claim against old GM arises from contractual indemnification isn't determinative of the co-liability requirement because the underlying liability on which Rolls-Royce will have to spend whatever it ultimately spends, will be one that it has in common with old GM.

Both have a statutory duty to remediate. The GUC Trust is right when it says at page 10 of its opening brief, citing Judge Gropper's decision in GCO Services, 324 BR at 366, that "indemnification by its very nature presupposes co-liability." As the GUC Trust properly observes, the claim here is premised on the theory that if the GUC Trust doesn't pay for cleanup -- future cleanup costs at the facility, Rolls-Royce will be required to pay more. As I held earlier in this Motors Liquidation case with respect to the RELCO claim, that "is the very essence of co-liability."

Here, Rolls-Royce acknowledges that by operation of law, as the successor owner of the facility, it became statutorily liable for the remediation of the facility which it acquired. See it's response at page 4, where it acknowledged that Rolls-Royce is exposed on the amounts it fears it may have to pay in the future, because it's a PRP under Cercla, which imposes liability on present owners or operators of sites, like Rolls-Royce, and their past owners or operators, like old GM.

As the current owner or operator of the facility, Rolls-Royce is statutorily liable for environmental cleanup costs, just as old GM as the former owner and operator is. As its sole authority and support of its position, Rolls-Royce cites the decision of a district judge in In re Allegheny International, 126 BR 919, back in 1991. That

decision has been repeatedly criticized and/or rejected in this district and elsewhere, see In re Cottonwood Canyon, 146 BR 992 at page 996 (Bankruptcy District of Colorado, 1992); In re Drexel Burnham, 148 BR 982 at page 998 (Bankruptcy Southern District of New York, 1992); In re Eagle-Picher, 164 BR 265, at page 271(Southern District of Ohio, 1994); In re Hexcel Corporation, 174 BR 807 at page 813 (Bankruptcy Northern District of California, 1994); Lyondell Chemical, 442 BR at 253, and Chemtura, 443 BR at 622. Drexel Burnham, Eagle-Picher, Hexcel, Lyondell Chemical, and Chemtura noted that Allegheny had been criticized and chose to follow Cottonwood Canyon instead.

I discussed the reasons that Allegheny had to be rejected in each of my lengthy decisions in Lyondell Chemical, 442 BR at page 253 and the pages following, and Chemtura, 443 BR at page 622 and the pages following. In each of which, I expressly stated that “I must join the other Courts that have disagreed with the Allegheny decision.” Lyondell Chemical, 442 at 253.

I won’t repeat that discussion at comparable length here. As I explained in Chemtura, and I’m quoting, “the Allegheny Court acknowledged that its decision not to disallow the claimant’s claim under Section 502(e)(1)(b) left the debtors vulnerable to multiple recoveries.” And I then continued, and this is most important to what we have

here, "what the Allegheny Court failed to realize, however, is that this risk of duplicative recoveries arose because the debtors and claimant were co-liable." Emphasis on because, emphasis in original. And I went on to say that for that reason, several cases, as I've previously noted, had rejected Allegheny -- Allegheny's logic.

I noted that in Cottonwood Canyon, for instance, the Court stated that the fact that the Allegheny Court found it necessary to establish a trust showed that the debtor and the claimant shared a common liability against which the claimant sought to protect itself. See Cottonwood Canyon, 146 BR at 996.

To my surprise, Rolls-Royce did not substantively address or even mention Cottonwood Canyon, or any of the other cases that had rejected Allegheny's logic. For the same reason, by the way, I have to reject the logic in Harvard Industries, 138 BR 10, bankruptcy case back in 1992, which Rolls-Royce also did not cite but which follows Allegheny's logic.

Here, I have a contention that the cases which I've previously noted that reject Allegheny are distinguishable by reason either of the contractual obligation or the fact that pursuant to the contract old GM had performed for a long time, here 16 years, or both. But I find these facts to be insufficient to provide a legally

cognizable basis for disregarding all of the authority that I've previously stated. Or, more importantly, the underlying principals on which those other cases rested.

Contractual indemnifications provided the basis for co-liability in Cottonwood Canyon, see 146 BR at pages 993 to 994, and Chemtura with respect to the portion of that decision that dealt with the LPRSA members, see 443 BR at 627. Indeed, Cottonwood Canyon noted that, "the facts in Allegheny are for purposes of this discussion nearly identical to the present case." 146 BR at 996. Similarly, the fact that old GM complied for 16 years does not make it in any way distinguishable from earlier authority.

In Cottonwood Canyon, for instance, there had been performance of a prepetition cleanup obligation by the debtor for a period of 8 years, see 146 BR at pages 993 and -- to 994. Likewise, there was a prepetition compliance by the debtor of its cleanup obligation, also through a period coincidentally of 8 years in Hexcel, 146 BR at pages 808 to 809.

Indeed as I've noted previously, I believe, but in any event I will note now, Hexcel had double-barreled obligations -- excuse me, Cottonwood Canyon had double-barreled obligations to clean up and indemnify. Also, as held in Wedtech, Chemtura, Cottonwood Canyon, and this case, Motors Liquidation in May of this year, Section 502(e)(1)(b)

is applicable whether the underlying claimant files a proof of claim or not. Double recovery is an important consideration, but it is not the only one.

As I indicated at the outset, it's at best debatable that the rate of inflation would exactly offset the appropriate discount rate to be used in determining the present value of 30 years of future estimated cleanup costs. Even if costs estimated, but not actually incurred, could provide for a basis of liability, and even if they didn't otherwise take into account inflation, but I don't need to address that issue now, as the claims for reimbursement here must be disallowed as a matter of law.

For these reasons, Rolls-Royce's claims must be disallowed under Section 502(e)(1)(b). The GUC Trust is to settle an order consistent with these rulings. The time for appeal from this determination will run from the time of entry of the ensuing order and not from the time of this dictated decision.

All right, gentlemen, not by way of re-argument, anything further?

MR. WU: Thank you, Your Honor.

There are just two other matters in the contested matter section of the agenda. One is the debtor's 161st omnibus objection to claims. And this is on the grounds that the claims have been assumed by new GM. The omnibus

objection is going forward as to Carrier Corp. Carrier Corp did not file the formal response to the omnibus objection, and for quite some time we've been trying to reach the claimant through phone calls, and actually through letters as well, to advise them of the hearing and to get a sense of what their basis of their objection is to our omnibus objection. And we haven't been able to get in contact with them at all, unfortunately. We feel they've been ignoring us.

THE COURT: Pause. There had been earlier back and forth and then they just stopped?

MR. WU: Yes, Your Honor. And --

THE COURT: What's the time period between the time that the back and forth went on and the time that you got radio silence?

MR. WU: I would think it's roughly -- it could stretch as far as, I think, seven months or so -- or --

THE COURT: And what didn't they respond to? Phone calls? Emails? Both? What?

MR. WU: And letters as well.

THE COURT: I'm sorry.

MR. WU: And letters as well -- physical letters mailed to their address.

THE COURT: Were there efforts to call them as well?

MR. WU: A reference to call -- sure, our numbers were listed on the letters that we sent to them.

THE COURT: So, wait, a lawyer from Weil did pick up the phone and said, so what's going on, guys? Or try?

MR. WU: Yes, Your Honor. I personally called them -- tried to call them almost every day for a month.

THE COURT: Okay. Settle a separate order disallowing that claim. Let's see if they wake up. And if they don't, respond under the usual time for notice of settlement, which will be two business days notice by hand, fax, or email. Add a week if you use snail mail. I'll enter that order.

Normally, once a dialogue continues, I expect debtors and claimants to either agree or agree to disagree, just like you did with Mr. Strickon. And if they don't respond after the process starts, there comes a time when you've got to grant the relief of the type you're talking about. But if they were awake enough to contact you at one point, I want to be sure that they've abandoned this claim.

MR. WU: Okay, Your Honor. Yes. I'm not sure whether they were actually paid by new GM and maybe that's the reason why they're -- you know, they feel they no longer need to speak to us. But we'll see whether they actually --

THE COURT: Well, it may well be that if they decide to fight you, you're going to win then. Or they may

have no reason to do it. I'm annoyed that they wouldn't have the courtesy to return your calls also, but I can't yell at them in your absence. Or I guess I can, but you get the point.

MR. WU: Okay. Thank you, Your Honor.

And the last matter -- the last contested matter is the 220th omnibus objection to claims. And this is also on the grounds of 502(e)(1)(b). The omnibus objection is going forward as to the claim Foster Townsend.

Foster Townsend did file a formal response to the omnibus objection. And I think the call log reflects that counsel is not here today. Foster Townsend is actually the counsel to an individual by the name of Arthur Parrot (ph).

Arthur Parrot was involved in a motor vehicle accident where he allegedly struck another individual while operating a vehicle manufactured by the debtors. The individual that was struck by Arthur Parrot subsequently filed a negligence action against both Arthur Parrot and the debtors in the Ontario Superior Court of Justice. And in that litigation, Arthur Parrot did file a claim for contribution or -- and/or indemnification against the debtors. And that's also the basis of its proof of claim against the debtors.

Foster Townsend filed a response, but the -- the response filed by Foster Townsend is not substantive, and it

only reiterates the basis of the claim, and doesn't provide any legal or factual basis as to why the omnibus objection and 502(e)(1)(b) does not apply to the claimant. For that reason, we would ask that the omnibus objection be granted with respect to the claim.

THE COURT: GM and -- old GM and the claimant were both sued as a consequence of this car wreck, and we're talking about a cross-claim over?

MR. WU: That's right, Your Honor.

THE COURT: All right. Objection's sustained.

MR. WU: Thank you, Your Honor.

THE COURT: Does that take care of it?

MR. WU: Yes. That's it, Your Honor.

THE COURT: All right. Anything further, anybody? I hear nothing. We're adjourned.

(A chorus of thank you)

(Whereupon these proceedings were concluded at 11:04 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is a true and accurate record of the proceedings.

Jamie Gallagher

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